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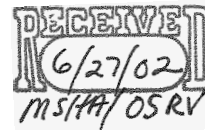
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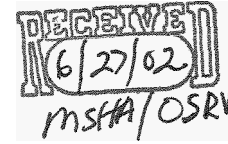
To: Marvin Nichols **From:** Adele Abrams, Esq., CMSP
Fax: (202) 693-9441 **Pages:** 4
Phone: 202 693-9440 **Date:** 6/27/2002
Re: ASSE Comments on Asbestos **CC:**

☐ Urgent ☐ For Review ☐ Please **Comment** ☐ Please Reply ☐ Please **Recycle**

● **Comments:**

See attached.

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June 26, 2002

Mr. Marvin Nichols
Director
Office of Standards, Regulations and Variances
Mine Safety and Health Administration
U.S. Department of Labor
1100 Wilson Blvd., 21st Floor
Arlington, VA 22209-3939

VIA E-MAIL: coxninents@msha.gov

RE: Comment on "Measuring and
Controlling Asbestos Exposure,"
Advance Notice of Proposed
Rulemaking (67 FR 15134; March 29,
2002)

Dear Mr. Nichols:

The American Society of Safety Engineers (ASSE) offers the following comments concerning the Mine Safety and Health Administration's (MSHA) Advance Notice of Proposed Rulemaking concerning occupational exposure to asbestos published in the March 29, 2002 Federal Register.

Founded in 1911, the non-profit ASSE is the oldest and largest organization representing safety professionals and is committed to protecting people, property and the environment. Among the ASSE's thirteen practice specialties is a section devoted to mine safety and health. The Society shares MSHA's desire to protect the health and safety of all miners and recognizes the need to control hazardous exposures to asbestos-containing products and materials. ASSE requests that these comments be included in the formal rulemaking record.

PELs

While the Society supports lowering the Permissible Exposure Limit (PEL) to 0.1 f/cc as proposed in the rule, it is critical that only real asbestos be regulated under the new

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standard. Approximately ten **years** ago, **OSHA** revised its asbestos **standard** and determined that non-asbestiform minerals should be excluded from its **scope**. To ensure consistency **and** uniformity, **MSHA** must also exclude non-asbestiform minerals in **this** rule. In addition, **MSHA** must employ appropriate definitions, and sampling/analytical methods **so that** other minerals (e.g., non-asbestiform actinolite, tremolite and anthophyllite) are not subject to unwarranted regulation **or are** inadvertently included in the sampling conducted for enforcement purposes,

Therefore, **ASSE** recommends ~~that~~ **MSHA** adopt a discriminate fiber counting method **that more** accurately corresponds to asbestiform minerals. The current federal fiber definition (particles **that are** at least five microns long and have a minimum aspect ratio of 3 to 1) **will** count *its* “fibers” cleavage fragments ~~that~~ are common **particles** in mining dust.

Because the environment **at** mines is **so** different from the environment that **OSHA** regulates, **MSHA** cannot simply adopt the current **OSHA** standard with its “federal fiber” definition. The method currently utilized by **OSHA** -- **Phase Contrast Microscopy (PCM)** -- **is** insufficiently sensitive to distinguish between different minerals. **However, as** witnesses explained at the June 20, 2002, **MSHA** hearing in Charlottesville, Virginia, ~~with~~ appropriate discriminate counting rules, the **PCM** method can **serve** as **an** effective tool ~~for~~ screening samples ~~for~~ asbestiform **fiber** content. To properly classify the asbestiform fibers on **a** sample, it is necessary to use electron microscopy analysis. This is consistent with *the* recommendation of the Department of Labor’s Inspector General, following its analysis of the Libby, MT, **asbestos** investigation.

Take Home Contamination

In the **same** interest of encouraging consistency and uniformity, any regulation of “take home contamination” must focus **on** the **true** asbestos and asbestos-containing **products**, **as** defined in **the OSHA and EPA** asbestos standards, rather than applying such requirements to all **and** any level of mineral exposures at mines, **pits** and quarries. To that end, **ASSE** recommends that **MSHA** act consistently with the “take home contamination” prevention measures codified **by OSHA** at 29 CFR 1926.1101.

Inclusion of Safety Professionals

Also of concern to **ASSE** **is** that safety professionals **are** excluded from **some portions** of the **OSHA** asbestos rule, although, following the Society’s objections, safety professionals were eventually included in **the COSHO QUIPS** sheet. **As has been demonstrated** to **OSHA** as well as **the Navy and** the Environmental Protection Agency over the same asbestos issue, safety professionals **are** fully qualified *to* perform the analytical functions described in this comment. **ASSE** respectfully **asks** that safety professionals’ capabilities not be overlooked in the drafting of **a** rule if competency issues will **be** addressed.

Technical and Economic Feasibility

ASSE consistently supports sound science **and** analysis of the **technical** and economic feasibility of all MSHA rules. The Society urges that the agency review critically the technical feasibility **of** any future **asbestos standard in accordance** with the Regulatory Flexibility Act **and the** Small Business Regulatory Enforcement Fairness Act **and** fully comply **with** the new U.S. Department **of** Labor guidelines for ensuring and maximizing the quality, objectivity, utility and integrity of information that forms the basis for regulatory decisions. See **DOL Draft Information Quality Guidelines**, published May 1, 2002. Inappropriate or arbitrary decisions concerning the classification of minerals based on flawed scientific conclusions create a potential discontinuity between OSHA and MSHA in the regulation of the same substances and, more importantly, fail to provide health and safety benefits for miners.

Thank you for your consideration of the Society's perspective.

Sincerely,

A handwritten signature in black ink, appearing to read "M.E. Greer", is shown on a light gray rectangular background.

M.E. Greer, CSP
Society President 2001-2002

cc: Adele Abrams, Esq., CMSP
ASSE Federal Affairs Representative